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United States to Appeal WTO Ruling on FSC/ETI Tax Law

WASHINGTON - The United States Trade Representative today announced that the United States will appeal a World Trade Organization ruling on a provision of U.S. tax law that allows U.S. companies to exclude their foreign source income from tax. The European Union challenged the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 ("ETI Act") – which replaced the Foreign Sales Corporation ("FSC") provisions of U.S. tax law – as an unfair subsidy to U.S. corporations. The United States argued that the ETI Act was WTO-compliant and similar to European tax laws.

"The FSC/ETI issue is a sensitive one involving complex tax policy questions and the interests of many international companies. As I cautioned in May during a visit to Europe, there is a lot at stake and the United States will vigorously defend its interests," said United States Trade Representative Robert B. Zoellick.

"The prior Administration worked closely with the Congress to fashion the ETI remedy; this Administration consulted closely with the Congress in considering the appropriate approach. Many members of Congress and the business community expressed their strong preference that the United States should appeal the FSC decision," Zoellick said.

"We have decided to appeal because we believe the decision was in error. The United States stands by its WTO obligations, which serve America's interests. We have discussed our concerns with the EU, with which we'll continue to seek to cooperate to manage, and, ultimately, resolve this dispute," said Zoellick.

Background:

In March 2000, the World Trade Organization (WTO) ruled against the FSC provisions of U.S. tax law. Last November, Congress passed the ETI Act to comply with the WTO ruling, but the European Union (EU) challenged the new law. On August 20, 2001, a WTO dispute settlement panel found that

the ETI Act violates U.S. WTO obligations. This second adverse ruling is what the United States today announced it would appeal.

The ETI Act provides an exclusion from tax for foreign-source income. The Act was intended to replicate, within the parameters of the U.S. tax system, the tax treatment afforded this type of income under European tax systems.

The appeal, which is provided for in a September 2000 procedural agreement between the United States and the EU, is expected to take between 60-90 days. If the WTO Appellate Body should reverse the panel's findings that the ETI Act is WTO-inconsistent, that will be the end of the dispute. On the other hand, if the Appellate Body should affirm the panel's findings, there would then be an arbitration to determine the amount of countermeasures, if any, to which the EU is entitled.

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